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10/757,272	01/14/2004	Richard Proctor	646P	4139

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Thomas M. Freiburger  
P.O. Box 1026  
Tiburon, CA 94920

EXAMINER

HWANG, VICTOR KENNY

ART UNIT	PAPER NUMBER
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3764

DATE MAILED: 12/12/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/757,272

Applicant(s)

PROCTOR, RICHARD

Examiner

Victor K. Hwang

Art Unit

3764

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 14 June 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-42 is/are pending in the application.
- 4a) Of the above claim(s) 31-42 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-7, 19-23 and 26-30 is/are rejected.
- 7) ☒ Claim(s) 8-18, 24 and 25 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 14 January 2004 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☒ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date June 14, 2004.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

**DETAILED ACTION*****Election/Restrictions***

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:
  - I. Claims 1-30, drawn to the exercising and physiotherapy system, classified in class 482, subclass 129.
  - II. Claims 31-42, drawn to the methods for exercising, classified in class 482, subclass 121.
2. The inventions are distinct, each from the other because of the following reasons:

Inventions I and II are related as product and process of use. The inventions can be shown to be distinct if either or both of the following can be shown: (1) the process for using the product as claimed can be practiced with another materially different product or (2) the product as claimed can be used in a materially different process of using that product. See MPEP § 806.05(h). In the instant case the product as claimed can be used as a rack supporting a plurality of archery bows, fishing rods or pole vaulting poles.
3. Because these inventions are independent or distinct for the reasons given above and there would be a serious burden on the examiner if restriction is not required because the inventions require a different field of search (see MPEP § 808.02), restriction for examination purposes as indicated is proper.
4. This application contains claims directed to the following patentably distinct species:

Species A	Figs. 1, 23 and 24 depicting pull-up exercises
Species B	Fig. 3 depicting a dip exercise
Species C	Figs. 4 and 5 depicting a triceps exercise
Species D	Figs. 6 and 7 depicting a shoulder shrug exercise
Species E	Figs. 8 and 9 depicting a push-up exercise
Species F	Fig. 10 depicting a rowing exercise
Species G	Fig. 11 depicting a hyperkyphosis exercise
Species H	Figs. 12 and 13 depicting a lumbar spine exercise
Species I	Figs. 14 and 15 depicting an arm and shoulder exercise
Species J	Figs. 16 and 17 depicting a spinal extension exercise
Species K	Figs. 18 and 19 depicting a lumbar extension exercise
Species L	Fig. 20 depicting a lumbar exercise
Species M	Fig. 21 depicting a running exercise

The species are independent or distinct because the exercises as claimed are performed in a mutually exclusive manner; are not obvious variants; and can have a materially different design, mode of operation, function, or effect.

Applicant is required under 35 U.S.C. 121 to elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. Currently, none of the method claims is generic to all of the disclosed species of exercises.

Applicant is advised that a reply to this requirement must include an identification of the species that is elected consonant with this requirement, and a listing of all claims readable

thereon, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which depend from or otherwise require all the limitations of an allowable generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species. MPEP § 809.02(a).

5. During a telephone conversation with Thomas M. Freiburger on November 29, 2006 a provisional election was made without traverse to prosecute the invention of Group I, claims 1-30. Affirmation of this election must be made by applicant in replying to this Office action. Claims 31-42 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

### *Specification*

6. The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required:

in claim 11, the recitation that the vertical bar support members have a “series of hubs along their lengths” does not find support in the specification;

in claim 26, the recitation that the frame is “at least six feet in height and at least about four feet in width” does not find support in the specification;

in claim 27, the recitation that the frame is “at least about seven feet in height” does not find support in the specification;

in claim 28, the recitation that the system includes “pairs of flexible bars of substantially equal stiffness” does not find support in the specification; and

in claim 30, the recitation that the system includes “at least about twelve of the upright bar support frame members” and each bar support member has “at least about six holes” does not find support in the specification.

### *Claim Objections*

7. Claims 4, 11-15 and 24-25 are objected to because of the following informalities:

in claim 4, the recitation “the plastic material” lacks antecedent basis and presumably, the claim should depend from claim 3;

in claims 11 and 24, the recitation “the upright frame members” spanning lines 1-2 of each claim lacks proper antecedent basis and presumably refers to --the upright bar support members--;

in claims 11 and 24, the recitation “the bar support members” on line 3 of each claim lacks proper antecedent basis and presumably refers to --the vertical bar support members--; and

in claims 11 and 24, the recitation of a “series of hubs” and a “series of holes” in respective claims is unclear whether the hubs/holes are the same as the series of holes in the upright bar support frame members recited in claim 5, and are presumed to be the same as those recited in claim 5.

Claims 12-15 and 25 depend from claims 11 or 24, and are likewise objected to.

Appropriate correction is required.

***Claim Rejections - 35 USC § 112***

8. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

9. Claims 23, 29 and 30 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The term "sufficiently stiff" in claim 23 is a relative term which renders the claim indefinite. The term "sufficiently stiff" is not defined by the claim, the specification does not provide a standard for ascertaining the requisite degree, and one of ordinary skill in the art would not be reasonably apprised of the scope of the invention. Furthermore, the term "sufficiently stiff" relies upon the recitation "the full weight of a user" which sets forth recitations describing the elements of the invention with respect to a particular user. As the particular user cannot form part of the invention, and it is impossible to ascertain the correspondence between a particular apparatus and the invention until a particular user engages the apparatus, the claim is further indefinite.

The term "a sufficient number" in claim 29 is a relative term which renders the claim indefinite. The term "a sufficient number" is not defined by the claim, the specification does not provide a standard for ascertaining the requisite degree, and one of ordinary skill in the art would not be reasonably apprised of the scope of the invention. It is vague and indefinite as to what

constitutes a "sufficient number" of upright bar support frame members. Claim 30 depends from claim 29 and is likewise indefinite.

***Claim Rejections - 35 USC § 102***

10. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

11. Claims 1, 2, 5, 6, 19, 20-23, 26, 27 and 29 are rejected under 35 U.S.C. 102(b) as being anticipated by *Webster et al.* (US Pat. 5,395,296). *Webster et al.* discloses an exercising and physiotherapy system comprising a frame 10 defining a space within which a user is positioned. A collection of flexible bars 18,20,21,54,56,58,60,62 and 64 sufficiently flexible to bend when engaged in exercising movements by a user, are provided and include bars in a range of different stiffnesses. The frame has bar support means 19,22,24,28,40,42,46 for receiving and holding the bars, by engaging the bars near both ends of the bars, and allow the bars to pull inwardly relative to the frame as the bars are flexed during use.

The bar support means are in a plurality of locations on the frame for positioning one or more bars in a multiplicity of different locations for a plurality of different exercises for different exercising users. The bar support means provide for receiving and holding the bars in both vertical and horizontal bar positions. The bar support means comprise a sufficient number of upright bar support frame members 19 having a series of holes 109 having rounded edges 110 into which the two ends of a bar are placed such that two holes retaining a bar are positioned at



corresponding locations at opposite sides of the frame. The frame includes horizontal bar support frame members having holes for receiving ends of the bars between spaced apart pairs of horizontal bar support frame members so as to permit exercising with one or more vertically positioned bars 20,21.

A user may exercise the hands and arms from a standing position. The frame member 46 presents a surface tilted toward the space defined by the frame such that the user's body may assume an oblique or generally horizontal position when exercising. The frame member 46 can be used as a foot platform for supporting the weight of a user wherein the foot platform is connected to two of the flexible bars, the two bars being supported near their ends by the frame. The bars come in a range of tensions such that a lightweight user could have their full weight supported with the bar suspended on the frame. The frame is approximately 5 feet deep, 7 feet wide, and 7 feet high.

### ***Claim Rejections - 35 USC § 103***

12. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

13. Claims 3, 7, 28 and 30 are rejected under 35 U.S.C. 103(a) as being unpatentable over *Webster et al.* (US Pat. 5,395,296). *Webster et al.* has been discussed above, and such discussion is incorporated herein. *Webster et al.* discloses the invention as claimed except for the bars made of plastic material (claims 3 and 7); pairs of flexible bars of substantially equal stiffnesses (claim

28); and including at least about twelve of the upright bar support frame members, each bar support member having at least about six holes for different bar positions (claim 30).

With regard to claim 28, *Webster et al.* shows pairs of bars positioned on each side of a user (Figs. 7A-G, H and I) and discloses that the bars may be selected from various diameter dimensions so as to provide desired displacement properties. Each limb is grasping a bar and moving the bar against a resistance to provide exercise to that limb. Generally, the strength of each limb is substantially equal to the strength of the opposite limb and the resistance applied to each limb is equal so as to provide a symmetric resistance to the user's body. It would have been obvious to one having ordinary skill in the art that the left and right bars of *Webster et al.* have substantially equal stiffnesses, in order to provide symmetric resistance to the user's body.

With regard to claims 3 and 7, the bars of *Webster et al.* can comprise bungee cords or shock cords. Bungee cords and shock cords are well known to be constructed of synthetic rubber material. Synthetic rubber is a plastic material. It would have been obvious to one having ordinary skill in the art at the time the invention was made that the bars of *Webster et al.* are made of plastic material, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416.

With regard to claim 30, *Webster et al.* discloses that additional stations may be added to the existing structure to permit additional exercises (col. 3, lines 18-21). Duplicating the components of a prior art device is a design consideration within the skill of the art. *In re Harza*, 274 F.2d 669, 124 USPQ 378 (CCPA 1960). Therefore, providing the system of *Webster et al.* with at least about twelve of the upright bar support frame members, each bar support member

having at least about six holes for different bar positions would have been a design consideration within the skill of the art.

14. Claims 1, 3 and 4 are rejected under 35 U.S.C. 103(a) as being unpatentable over *Stevens* (US Pat. D278,490) in view of *Cecka et al.* (US Pat. 4,212,461). *Stevens* discloses an exercising system comprising a frame defining a space within which a user could be positioned for exercising. A collection of flexible bars (the bows) having sufficient flexibility to bend when engaged in exercising movements by a user can be supported by the frame. The bows typically come in a range of different stiffnesses dependent upon the skill of the user. The frame has bar support means for receiving and holding the bows, by engaging the bows near both ends of the bow, and allowing the bows to be pulled inwardly (downwardly) relative to the frame as the bows are flexed during use. The bow support means being in a plurality of locations on the frame for positioning one or more bows in a multiplicity of different locations for a plurality of different exercises for exercising different users. The frame is a rack shown with one bow being supported and plenty of room to support a plurality of bows.

*Stevens* does not disclose a collection of the flexible bars (bows) having a range of different stiffnesses (claim 1); the flexible bars formed of plastic material (claim 3); and the plastic material being acetal (claim 4).

*Cecka et al.* discloses a material used for the construction of a variety of sporting and exercise equipment, including archery bows (col. 12, lines 47-58) and includes the use of acetal material (col. 5, line 65). It is well known in the art that archery bows come in a variety of

stiffnesses, in order to provide different strengths for propelling an arrow and to suit the varying strengths of users.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the rack of *Stevens* with a plurality of bows, since the rack is sized for a plurality of bows and that the bows be of varying stiffnesses, in order to provide the user of the rack with a choice of bows to use.

It would have also been obvious to one having ordinary skill in the art at the time the invention was made that the bows of *Stevens* be formed of the plastic acetal material of *Cecka et al.*, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416.

#### ***Allowable Subject Matter***

15. Claims 8-18, 24 and 25 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

The following is a statement of reasons for the indication of allowable subject matter: the prior art of record does not disclose the bars having enlarged heads on their ends smaller than the holes in the frame members so as to be insertable into the holes but substantially retaining the bar in the frame during exercising use (claims 8-10, and 16-18); or the vertical bar support members extending between horizontal frame members of the frame and being adjustable in position along the length of the horizontal frame members (claims 11-15 and 24-25).

**Conclusion**

16. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

*Stires* (US Pat. 2,852,218), *Flynn* (US Pat. 3,472,509), *Kruthaupt* (US Pat. 3,701,529), *Munger et al.* (US Pat. 3,814,416), *Bushnell* (US Pat. 4,241,914), *Dempsey, Jr.* (US Pat. 5,078,388), *Ferri* (US Pat. 5,209,712), *Pardella* (US Pat. 5,326,337); *Maycock, Jr. et al.* (US Pat. 5,529,550), *Hancock* (US Pat. 6,036,621), *Gonzalez-Leal* (US Pat. 6,152,857), *Koenig* (US Pat. 6,641,510 B2), *Dalebout et al.* (US Pat. App. Pub. No. 2003/0232707 A1), *Mattox* (US Pat. App. Pub. No. 2004/0147380 A1) and *Tom* (US Pat. 7,041,033 B2) disclose systems having structure and functions related to the claimed invention.

17. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Victor K. Hwang whose telephone number is (571) 272-4976. The examiner can normally be reached Monday through Friday from 7:30 AM to 4:00 PM Eastern time.


The facsimile number for submitting papers directly to the examiner for informal correspondence is (571) 273-4976. The facsimile number for submitting all formal correspondence is (571) 273-8300.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jackie Ho can be reached on (571) 272-4696.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Victor K. Hwang  
December 4, 2006



(JACKIE) TAN-UYEN HO  
PRIMARY EXAMINER  
12/8/06